

## Message Text

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PAGE 01 STATE 011792  
ORIGIN TRSE-00

INFO OCT-01 EUR-12 ISO-00 EB-07 L-03 COME-00 /023 R

DRAFTED BY TREASURY:JCHOLBERTON:LG  
APPROVED BY EUR/EE:NGANDREWS  
COMMERCE/BEWT/DSTEIN  
EUR/EE:SFROMOWITZ  
EB/OMA:TFORBARD (INFO)

-----190725Z 087905 /22

R 182134Z JAN 77  
FM SECSTATE WASHDC  
TO AMEMBASSY BUCHAREST

UNCLAS STATE 011792

E.O. 11652: N/A

TAGS: BTIO, RO

SUBJECT: INTERPRETATION OF U.S.-ROMANIAN TAX CONVENTION

REF: 76 BUCHAREST 7157; 76 BUCHAREST 7426

1. IN REFERENCE TO PARAGRAPH 2(A) OF REF (A), TREASURY INFORMS US THAT ARTICLE 12 OF CONVENTION APPLIES ONLY TO "RESIDENTS" OF A CONTRACTING STATE. UNDER ARTICLES 3(1)(B) AND 2(1)(E)(II), ONLY CORPORATIONS ORGANIZED UNDER LAWS OF U.S., ANY STATE OF U.S., OR DISTRICT OF COLUMBIA ARE U.S. "RESIDENTS". THEREFORE, CONVENTION DOES NOT APPLY TO ENGLISH SUBSIDIARY OF U.S. CORPORATION (HOUDRY).
2. INFORMATION IN PARA 2(B) OF REF (A) INADEQUATE FOR TREASURY TO EXPRESS AN OPINION.
3. IN REFERENCE TO FIRST INQUIRY IN PARA 2 OF REF (B), TREASURY INFORMS US THAT U.S. COMPANIES SHOULD BE INSTRUCT-

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ED TO CONSULT THEIR TAX ADVISORS TO SEE WHETHER THE ROMANIAN TAXATION IS IN ACCORDANCE WITH THE CONVENTION. IF NOT, THEY SHOULD SUBMIT THEIR CASES TO COMPETENT AUTHORITY OF U.S. IN ACCORDANCE WITH TERMS OF ART. 23 OF CONVENTION. UNDER ART. 2(1)(F)(II), COMPETENT AUTHORITY OF U.S. IS I.R.S.

4. IN REFERENCE TO SECOND INQUIRY IN PARA. 2 OF REF (B), WHETHER DESIGN AND ENGINEERING SERVICES INCIDENTAL TO BUT SEPARATE FROM LICENSE IS INDUSTRIAL ROYALTY UNDER ART. 12 OF CONVENTION DEPENDS ON SPECIFIC NATURE OF SERVICES. GENERALLY, U.S. TAX LAW DOES DISTINGUISH BETWEEN PAYMENTS FOR THE USE OF RIGHT TO USE INDUSTRIAL KNOW-HOW, WHICH ARE CONSIDERED ROYALTIES, AND PAYMENTS FOR THE PROVISION OF TECHNICAL SERVICES AND ASSISTANCE, WHICH ARE NOT CONSIDERED ROYALTIES. HOWEVER, SPECIFIC FACTS AND CIRCUMSTANCES SHOULD BE SUBMITTED BY U.S. COMPANIES TO THEIR TAX ADVISORS (OR TO I.R.S.) FOR DETERMINATION OF WHETHER THE PAYMENTS FOR THE SERVICES CONSTITUTE INDUSTRIAL ROYALTIES UNDER THE CONVENTION.

5. REGRET DELAY IN RESPONSE TO EMBASSY'S QUERIES.  
KISSINGER

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NNN

## Message Attributes

**Automatic Decaptioning:** X  
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**Reference:** 76 BUCHAREST 7157, 76 BUCHAREST 7426  
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**Subject:** INTERPRETATION OF U.S.-ROMANIAN TAX CONVENTION  
**TAGS:** BTIO, RO  
**To:** BUCHAREST  
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**Review Markings:**  
Margaret P. Grafeld  
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**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009